

REMARKS

Reconsideration of the application is respectfully requested based on the following remarks. Claims 122-135 are pending. In the Office Action, the Examiner rejected claims 123-135 and claim 122 was withdrawn from consideration. Claims 136-152 have been added herein.

RESTRICTION REQUIREMENT UNDER 35 USC §121

In the Office Action, the Examiner has required restriction between inventions as process and apparatus for its practice. Applicant is required to elect a single invention from among groups:

- I. Claim 122, drawn to a method of determining the concentration of an analyte, classified in class 436, subclass 164.
- II. Claims 123-135, drawn to a fiber optic apparatus with a dried reagent coated on one end of the fiber, classified in class 422, subclass 82.05.

Applicant provisionally elects group I, comprising claim 122, with traverse.

The Examiner stated that inventions I and II are distinct processes and apparatus. Applicant respectfully disagrees. Claim 122 of group I is a process claim that cannot be practiced by another and materially different apparatus from that claimed in Claim 123 of group II. Furthermore, Claim 123 of group II is a product claim that cannot be used to practice another and materially different process from that claimed in Claim 122 of group I. The Examiner stated that, “the apparatus as claimed can be used to practice another and materially different process that does not require a ‘working membrane.’” Applicant respectfully disagrees and points out that the working membrane comprises optical properties that change with the quantity of the analyte and can only be detected using the method claimed in Claim 122 of group I. Additionally, the Examiner stated that “[t]he ‘working membrane’ of the method claims could be electrochemical and not require a

reagent.” Applicant respectfully disagrees and points out that the “working membrane” of the method cannot be applied to an electrochemical apparatus and doing so would not result in accurate detection of the analyte. As such, the inventions are not distinct and a requirement for restriction cannot be made or maintained. See MPEP § 806.05(e).

The restriction requirement is further traversed on the grounds that it should not be a serious burden on the Examiner to search database literature generally in connection with the examination of group I for a method of determining a concentration of an analyte and claims of group II for a working membrane for the detection of such analyte. The Examiner shows that group I is classified in class 436, subclass 164 (class: CHEMISTRY: ANALYTICAL AND IMMUNOLOGICAL TESTING, subclass: Optical Result). The Examiner shows that group II is classified in class 422, subclass 82.05 (class: CHEMICAL APPARATUS AND PROCESS DISINFECTING, DEODORIZING, PRESERVING, OR STERILIZING, subclass: Measuring optical property by using ultraviolet, infrared, or visible light). [The art of record cited by the Examiner in rejection of claims in group I, include classifications in classes 128, 424,, 435, 436, 536]. These references provide various teachings regarding methods and apparatus for the detection of analytes. Applicant’s group II claims are directed to a membrane for the detection of analytes. As discussed above, Applicant believes that claim 122, of group I, and claim 123, of group II, are related as a process and an apparatus for its practice. Since the Examiner has conducted a proper search regarding the details of claim 122, Applicant does not believe that the additional details of group II impose a serious burden, if any, on the Examiner to search database literature.

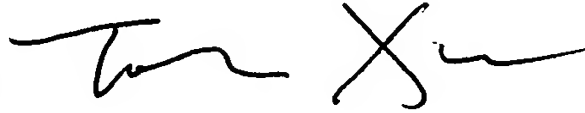
Applicant respectfully requests the Examiner to withdraw the restriction requirement and rejoin claims 123-135.

CONCLUSION

In view of the foregoing, it is respectfully submitted that the new claims presented herein are novel over the cited art and a Notice of Allowance for this application is respectfully requested from the Examiner.

Respectfully submitted,

Tom Xu
June 10, 2010

A handwritten signature in black ink, appearing to read 'Tom Xu', with a stylized, cursive script.